

PLANNING AND ZONING COMMISSION
MEMORANDUM

April 16, 2009



Proposed text amendments to the Subdivision Ordinance and the Land and Site Development Ordinance concerning the establishment of a sidewalk construction fund

For a number of years, the requirement for developers or property owners to construct sidewalks when platting or redeveloping has been a part of both the Subdivision and the Land and Site Development Ordinances. The Planning and Zoning Commission and City Council recognized the need for sidewalks as part of the transportation infrastructure of Bryan and adopted these rules in an effort to obtain sidewalks along city streets as part of new development and redevelopment rather than burden taxpayers with the expense.

There have been occasions where the strict application of these provisions required construction of sidewalks where the benefit to the general public was questionable. As an example, a replat or renovation that mandated construction of a section of walkway in an area that no other connecting side walks existed for some considerable distance (“the sidewalk to nowhere”).

Staff is proposing the attached amendments to both the Subdivision and the Land and Site Development Ordinances to advance the purpose of adopted ordinances, i.e., to obtain sidewalks along city streets. As proposed, sidewalk construction would still be required in certain development and redevelopment situations. The amendments would provide a developer with the option to not have to construct sidewalks in areas where no or little benefit to the public is derived by such construction. The amendment establishes a procedure that will allow a developer or property owner to deposit money into a sidewalk construction fund in lieu of actual construction of the sidewalk required by ordinance. The amendment also specifies how and by when that money is to be used by the city. Specifically, staff recommends the following ordinance changes:

1. Chapter 62 (Land and Site Development): Amend the text of Bryan Code of Ordinances Section 62-295, adding a process by which developers or property owners who are required to construct sidewalks may request approval to pay money into a sidewalk fund in lieu of construction; establishing a system by which staff sets the amount to be paid into the fund; establishing the fund and rules governing its use and the procedure by which those who have paid into the fund may ask for refunds.
2. Chapter 110 (Subdivision): Amend the text of Bryan Code of Ordinances Section 110-59, adding a process by which developers or property owners who are required to construct sidewalks may request approval to pay money into a sidewalk fund in lieu of construction; establishing a system by which staff sets the amount to be paid into the fund; establishing the fund and rules governing its use and the procedure by which those who have paid into the fund may ask for refunds.

The proposed ordinance amendments are scheduled for discussion and action by the Planning and Zoning Commission during the regular meeting on April 16, 2009. The Planning and Zoning Commission will have the opportunity to make a recommendation concerning these proposed ordinance changes to the City Council.

Staff recommends **approving** the proposed changes to the Bryan Code of Ordinances. Approving these ordinance changes will advance Bryan’s goal of providing safe alternatives to vehicle transportation.

Land and Site Development Ordinance - Chapter 62 Bryan Code of Ordinances

ARTICLE VI. ACCESS AND OFF-STREET PARKING

DIVISION 2. ACCESS, PARKING AND CIRCULATION PROVISIONS

Section 62-295. General.

(a) *Compliance with ordinances, regulations and plans.* Any person seeking access to lands abutting the public street right-of-way shall comply with these regulations and:

- (1) The city's subdivision development ordinance.
- (2) The city's comprehensive zoning ordinance.
- (3) Other applicable city regulations, codes or ordinances.
- (4) Comprehensive plans or plan components.
- (5) Texas Manual on Uniform Traffic Control Devices.
- (6) City's design guideline standards.
- (7) City's engineering standards, specifications, and details.

(b) *Downtown districts and home occupations.* These regulations shall not apply to developments located within the downtown districts nor to home occupations.

(c) *Sidewalk requirement.* Any site plan requiring a full review by the site development review committee will require the design and construction of typical concrete sidewalks in accordance with city design standards on all existing and proposed curb and gutter streets adjacent to or included in the proposed site plan.

(d) *Payment to Special Fund in Lieu of Sidewalk Construction.* A developer or property owner responsible for construction of a sidewalk under subsection 62-295 (c) may, on approval of the City Engineer, elect to meet that requirement in whole or in part by a cash payment in lieu of actual construction on the ground. Such payments shall be made by submitting a cashier's check after the time of final plat approval but prior to the time the plat is recorded with the county clerk's office.

The requirement shall be met by a fee in lieu of construction at a rate set at the current rate of construction per square foot or square yard of sidewalk built to adopted city standards at the time of application. Such rate shall be determined by the city surveying local construction bid prices, TxDOT bid prices and/or any other available bid price information. The bid price survey shall be conducted on an annual basis or more frequently, as determined by city staff. The bid price survey shall be conducted by the Transportation Services Department manager or his/her designee. The results of the survey will be filed and made available for public access in the offices of the Development Services Department. Based on the findings of the bid price survey the fee rate shall be established by agreement between the Transportation Services Department manager and the City Engineer.

Fee payments made under this section may be used only for construction of a new sidewalk or repair and maintenance of an existing sidewalk located within the same City Council single member district within which a majority of the land area of the development that required construction of a sidewalk under subsection or 62-295 (c) is located.

(e) Special Fund Created and Right to Refund. There is hereby established one special fund for the deposit of all sums paid in lieu of sidewalk construction under this section. These funds shall be established, maintained, and utilized by the city's Transportation Services Department.

The city shall account for all sums paid in lieu of sidewalk construction under this section with reference to the individual plats or projects involved. Any funds paid for such purposes must be expended by the city within ten (10) years from the date received for development of a sidewalk as defined herein. Such funds shall be considered to be spent on a first in, first out basis. If not so expended, the developer of the property on the last day of such period shall be entitled to a pro rata refund of the sum paid. The developer must request entitlement within one (1) year of entitlement to refund, or such right to a refund shall be waived. Refunds shall include any accrued interest minus one percent administrative costs.

Subdivision Ordinance - Chapter 110 Bryan Code of Ordinances

ARTICLE III. DESIGN STANDARDS FOR SUBDIVISIONS WITHIN THE CITY

Section 110-59. Standards for Subdivision Design.

[...]

(j) *Sidewalks.* Sidewalks shall be installed by the developer along both sides of all urban residential streets, arterials, collectors and cul-de-sac streets (not including around the bulb of cul-de-sac streets), except along existing streets without curbs and gutters Sidewalks shall be constructed to city standards including handicap accessibility at corners and access drives. All sidewalks must terminate into streets or access drives with ambulatory ramps. New sidewalks shall be built to adjoin existing walks and taper to required width if necessary.

(k) Payment to Special Fund in Lieu of Sidewalk Construction. A subdivider responsible for construction of a sidewalk under subsection 110-59 (j) may, on approval of the City Engineer, elect to meet that requirement in whole or in part by a cash payment in lieu of actual construction on the ground. Such payments shall be made by submitting a cashier's check after the time of final plat approval but prior to the time the plat is recorded with the county clerk's office, or prior to the issuance of a building permit if a subdivision plat is not required.

The requirement shall be met by a fee in lieu of construction at a rate set at the current rate of construction per square foot or square yard of sidewalk built to adopted city standards at the time of application. Such rate shall be determined by the city surveying local construction bid prices, TxDOT bid prices and/or any other available bid price information. The bid price survey shall be conducted on an annual basis or more frequently, as determined by city staff. The bid price survey shall be conducted by the Transportation Services Department manager or his/her designee. The results of the survey will be filed and made available for public access in the offices of the Development Services Department. Based on the findings of the bid price survey the fee rate shall be established by agreement between the Transportation Services Department manager and the City Engineer.

Fee payments made under this section may be used only for construction of a new sidewalk or repair and maintenance of an existing sidewalk located within the same City Council single member district within which a majority of the land area of the development that required construction of a sidewalk under subsection 110-59 (j) is located.

(l) Special Fund Created and Right to Refund. There is hereby established one special fund for the deposit of all sums paid in lieu of sidewalk construction under this section. These funds shall be established, maintained, and utilized by the city's Transportation Services Department.

The city shall account for all sums paid in lieu of sidewalk construction under this section with reference to the individual plats or projects involved. Any funds paid for such purposes must be expended by the city within ten (10) years from the date received for development of a sidewalk as defined herein. Such funds shall be considered to be spent on a first in, first out basis. If not so expended, the subdivider or developer of the property on the last day of such period shall be entitled to a pro rata refund of the sum paid. The subdivider or developer must request entitlement within one (1) year of entitlement to refund, or such right to a refund shall be waived. Refunds shall include any accrued interest minus one percent administrative costs.